

KEYWORD: Guideline F

DIGEST: The hearing was Applicant's opportunity to produce mitigating and other favorable evidence and he took advantage of that opportunity. The Board cannot consider new evidence produced on appeal. Adverse decision affirmed.

CASENO: 12-10072.a1

DATE: 07/10/2015

DATE: July 10, 2015

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In Re:)	
)	
-----)	ISCR Case No. 12-10072
)	
)	
Applicant for Security Clearance)	
_____)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Pro se

The Department of Defense (DoD) declined to grant Applicant a security clearance. On November 21, 2014, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline F (Financial Considerations) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On April 28, 2015, after the hearing, Defense Office of Hearings and Appeals Administrative Judge LeRoy F. Foreman denied Applicant’s request for a security clearance. Applicant timely appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Judge’s adverse clearance decision is arbitrary, capricious or contrary to law.

Applicant contends that the Judge erred in characterizing the status of four of the eighteen debts listed in the Statement of Reasons (SOR). With respect to two of those debts, the Judge found in favor of the Applicant. As to the other two debts, the Judge’s findings constitute a reasonable interpretation of the record that was before him. Even if erroneous, they are not likely to have affected the outcome of the case. Therefore, any error is harmless. Considering the record evidence as a whole, the Judge’s material findings of security concern are supported by substantial evidence and are sustainable. *See, e.g.*, ISCR Case No. 08-12167 at 2 (App. Bd. Jul. 16, 2010).

Applicant also contends that although the Judge based his decision on the data that was provided to him, that data did not show what Applicant had been going through during the time periods in which he had incurred his indebtedness. Applicant includes a narrative statement about those circumstances as part of his brief. Applicant’s Brief at 2. The Board cannot consider this new evidence on appeal. *See* Directive ¶ E3.1.29. The hearing was the Applicant’s opportunity to produce other evidence beyond that developed by his background investigation for the purpose of rebutting, explaining, extenuating, or mitigating facts to which he has admitted or which have been proven by Department Counsel. *See, e.g.*, Directive ¶ E3.1.15. Applicant also took advantage of the option to submit evidence after the hearings, including a five page letter to the Judge (App. Ex. G).

Finally, Applicant contends that the Judge did not give sufficient weight to his evidence of mitigation. In that regard, he argues that even though he just stated his repayment plan for his Federal tax debt in March 2015 and has a short payment history, he has not missed a payment. He also notes that he is almost finished paying off his state tax debt. Applicant’s arguments are not sufficient to establish that the Judge’s decision is arbitrary, capricious or contrary to law.

The presence of some mitigating evidence does not alone compel the Judge to make a favorable security clearance decision. As the trier of fact, the Judge has to weigh the evidence as a whole and decide whether the favorable evidence outweighs the unfavorable evidence, or *vice versa*. A party’s disagreement with the Judge’s weighing of the evidence, or an ability to argue for a different interpretation of the evidence, is not sufficient to demonstrate the Judge weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 10-08308 at 2 (App. Bd. Nov. 3, 2011).

In this case, the Judge found that Applicant had a lengthy history of not meeting financial obligations. He had failed to file Federal and state income tax returns for 2008 through 2011, and his three largest debts had been collected by involuntary garnishment. Decision at 2, 3 and 7. Although Applicant had made some efforts to resolve his financial problems, the Judge noted that those efforts were recent, “motivated primarily by his need for a security clearance rather than a sense of duty or obligation,” and demonstrated “little grasp of his overall financial situation.” *Id.* at 7. Accordingly, the Judge could reasonably conclude that Applicant’s financial problems were ongoing.

The Judge weighed the mitigating evidence offered by Applicant against the length and seriousness of the disqualifying circumstances, and considered the possible application of relevant conditions and factors. He found in favor of Applicant with respect to some of the allegations, but reasonably explained why the mitigating evidence was insufficient to overcome all of the government’s security concerns. The Board does not review a case *de novo*. The favorable evidence cited by Applicant is not sufficient to demonstrate the Judge’s decision is arbitrary, capricious, or contrary to law. After reviewing the record, the Board concludes that the Judge examined the relevant data and articulated a satisfactory explanation for his decision. “The general standard is that a clearance may be granted only when ‘clearly consistent with the interests of the national security.’” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Therefore, the Judge’s unfavorable security clearance decision under is sustainable.

Order

The decision of the Judge is AFFIRMED.

Signed: Michael Ra’anan
Michael Ra’anan
Administrative Judge
Chairperson, Appeal Board

Signed: Jean E. Smallin
Jean E. Smallin
Administrative Judge
Member, Appeal Board

Signed: William S. Fields
William S. Fields
Administrative Judge

Member, Appeal Board